
TITLE 71 INDIANA HORSE RACING COMMISSION

Emergency Rule
LSA Document #15-105(E)

DIGEST

Amends [71 IAC 8-4-3](#) and [71 IAC 8.5-3-3](#) regarding administrative procedures prior to split sample testing. Amends [71 IAC 8-10-2](#) and [71 IAC 8.5-10-2](#) regarding applicant and licensee subject to testing. Amends [71 IAC 8-10-3](#) and [71 IAC 8.5-10-3](#) regarding reasonable suspicion selection. Amends [71 IAC 8-10-4](#) and [71 IAC 8.5-10-4](#) regarding taking of samples. Amends [71 IAC 8-10-5](#) and [71 IAC 8.5-10-5](#) regarding positive sample results. Amends [71 IAC 8-10-6](#) and [71 IAC 8.5-10-6](#) regarding penalties. Amends [71 IAC 11-1-12](#) regarding contracts with permit holders. Amends [71 IAC 11-1-16](#) regarding material modifications to facilities. Amends [71 IAC 12-1-15](#) regarding contracts with license holders. Amends [71 IAC 12-1-19](#) regarding material modification of satellite facilities. Effective April 17, 2015.

[71 IAC 8-4-3](#); [71 IAC 8-10-2](#); [71 IAC 8-10-3](#); [71 IAC 8-10-4](#); [71 IAC 8-10-5](#); [71 IAC 8-10-6](#); [71 IAC 8.5-3-3](#); [71 IAC 8.5-10-2](#); [71 IAC 8.5-10-3](#); [71 IAC 8.5-10-4](#); [71 IAC 8.5-10-5](#); [71 IAC 8.5-10-6](#); [71 IAC 11-1-12](#); [71 IAC 11-1-16](#); [71 IAC 12-1-15](#); [71 IAC 12-1-19](#)

SECTION 1. [71 IAC 8-4-3](#) IS AMENDED TO READ AS FOLLOWS:

[71 IAC 8-4-3](#) Administrative procedures prior to split sample testing

Authority: [IC 4-31-3-9](#)

Affected: [IC 4-31-12](#)

Sec. 3. (a) The results of all tests performed by the primary laboratory or laboratories are confidential **until such time a ruling is issued in that matter** and shall only be communicated to the commission, commission staff, judges, owner, and trainer. Notice of a positive test result may be communicated verbally to the trainer. The trainer shall be responsible for promptly notifying the owner of a horse of a positive test as reported by the primary laboratory.

(b) The trainer or owner of a horse for which a positive result on a drug test is returned may request that the judges submit the retained part of the specimen for testing in accordance with this section. The specimen must be tested by a laboratory that is identified on the list of approved laboratories maintained by the commission and acceptable to the following:

- (1) The commission.
- (2) The primary laboratory.

Laboratories providing split sample testing shall be ISO 17025 accredited unless otherwise approved by the commission. The request must be in writing, include the laboratory selection, and must be delivered to the judges not later than ninety-six (96) hours after the trainer has received notice of a positive test result. Failure to request testing of a split sample and provide all necessary information within ninety-six (96) hours shall constitute a waiver of the right. The split sample laboratory shall be contacted by a representative of the commission to request acceptance of a split sample. The trainer or owner may choose any laboratory on the commission maintained applicable list to test the sample. However, the commission or executive director may limit the choice of laboratory for the detection of specific drugs.

(c) The trainer or owner may elect to waive his or her right to testing of a split sample.

(d) The owner or trainer of a horse who submits a specimen for drug testing is entitled to be present or have a representative present at any time that the retained part of the specimen is prepared for storage or is tested.

(e) The split sample laboratory may require the owner or trainer of a horse who submits a specimen for testing to execute a hold harmless agreement for the split sample laboratory and an agreement that the results of the split sample laboratory can be introduced as evidence in any hearing. The agreements shall remain in the hands of the judges of the state in which the positive was reported.

(f) The trainer or owner may request that negative control samples be tested with the split sample. The

identities of the negative control samples and the split sample shall be known only to the commission.

(g) The presence of a drug or drug metabolite in any quantity, excluding phenylbutazone, flunixin, ketoprofen, furosemide, or as permitted in [71 IAC 8-1-4.2](#) and [71 IAC 8-1-9](#), is sufficient for a finding of a positive test.

(Indiana Horse Racing Commission; [71 IAC 8-4-3](#); emergency rule filed Feb 10, 1994, 9:20 a.m.: 17 IR 1173; emergency rule filed Aug 10, 1994, 3:30 p.m.: 17 IR 2916; emergency rule filed Jan 27, 1995, 3:30 p.m.: 18 IR 1504; emergency rule filed Mar 25, 1997, 10:00 a.m.: 20 IR 2157; emergency rule filed Jun 22, 1998, 5:05 p.m.: 21 IR 4231; readopted filed Oct 30, 2001, 11:50 a.m.: 25 IR 899; emergency rule filed Jul 28, 2006, 11:17 a.m.: [20060809-IR-071060278ERA](#), eff Aug 1, 2006; readopted filed Mar 23, 2007, 11:31 a.m.: [20070404-IR-071070030RFA](#); emergency rule filed Jul 23, 2007, 9:16 a.m.: [20070808-IR-071070461ERA](#), eff Jul 18, 2007 [[IC 4-22-2-37.1](#) establishes the effectiveness of an emergency rule upon filing with the Publisher. LSA Document #07-461(E) was filed with the Publisher July 23, 2007.]; errata filed Aug 14, 2007, 1:28 p.m.: [20070829-IR-071070461ACA](#); emergency rule filed Jan 25, 2012, 12:20 p.m.: [20120201-IR-071120056ERA](#); emergency rule filed Apr 5, 2013, 3:50 p.m.: [20130410-IR-071130135ERA](#); emergency rule filed Apr 17, 2015, 3:15 p.m.: [20150422-IR-071150105ERA](#))

SECTION 2. [71 IAC 8-10-2](#) IS AMENDED TO READ AS FOLLOWS:

[71 IAC 8-10-2](#) Applicant and licensee subject to testing

Authority: [IC 4-31-3-9](#)

Affected: [IC 4-31](#)

Sec. 2. Each licensee at a race track or other facility under the control of the commission or applicant for a license may be subject to a urine **or saliva** test, **or both**, at any time while within the enclosure of any race track or other facility under the control of the commission at the direction of the executive director, the judges, or commission security if there is reasonable suspicion to believe that such licensee is possessing or using any controlled substance or any drug in violation of any federal or state law. This provision notwithstanding, licensees are subject to random urine **or saliva** testing pursuant to policies approved by the commission. Failure to submit to or complete a urine **or saliva** test at the time, location, and manner directed by commission personnel shall constitute a refusal to be tested. Any licensee who fails to submit to or complete such a test shall be immediately suspended for sixty (60) days and shall not be allowed to participate at any race track under the control of the commission until a negative test result is achieved. Any applicant who fails to submit to such a test when requested to do so shall be refused or denied a license.

(Indiana Horse Racing Commission; [71 IAC 8-10-2](#); emergency rule filed Feb 10, 1994, 9:20 a.m.: 17 IR 1176, emergency rule filed Aug 10, 1994, 3:30 p.m.: 17 IR 2918; emergency rule filed Mar 25, 1996, 10:15 a.m.: 19 IR 2081; emergency rule filed Feb 13, 1998, 10:00 a.m.: 21 IR 2414; emergency rule filed Feb 24, 2000, 2:32 p.m.: 23 IR 1670, eff Feb 24, 2000; readopted filed Oct 30, 2001, 11:50 a.m.: 25 IR 899; emergency rule filed Mar 10, 2006, 11:00 a.m.: 29 IR 2222; readopted filed Mar 23, 2007, 11:31 a.m.: [20070404-IR-071070030RFA](#); readopted filed Nov 26, 2013, 11:25 a.m.: [20131225-IR-071130345RFA](#); emergency rule filed Apr 17, 2015, 3:15 p.m.: [20150422-IR-071150105ERA](#))

SECTION 3. [71 IAC 8-10-3](#) IS AMENDED TO READ AS FOLLOWS:

[71 IAC 8-10-3](#) Reasonable suspicion selection

Authority: [IC 4-31-3-9](#)

Affected: [IC 4-31](#)

Sec. 3. (a) Applicants for a license or a licensee may be selected at any time while within the enclosure for testing on a reasonable suspicion basis.

(b) Reasonable suspicion. When determining whether there is reasonable suspicion to require testing, the judges may consider, but are not limited to, any of the following factors:

- (1) Unexplained or continued rule violations which have a detrimental effect on racing.
- (2) Involvement in any accident which causes injury to person or animal at the track as well as any near accident which created a clear danger of accident or injury to person or animal at the track.

- (3) Willful conduct detrimental to horse racing as evidenced by continued rule violations, other disciplinary problems, behavioral problems, disturbances, or other similar conduct at the track.
- (4) Observable physical or emotional impairment at the track.
- (5) Involvement in a race of questionable outcome or circumstance as determined by the judges in the exercise of their expertise.
- (6) Willful abuse of animal or person who is engaged in a race, work, or exercise at the track.
- (7) Prior positive test or tests in this or other jurisdictions, excluding those where a valid legal prescription has been revealed.
- (8) Performance of prescribed duties in a manner which indicates a best effort to win is not present at the track.
- (9) Information supplied by:
 - (A) a law enforcement agency;
 - (B) the USTA;
 - (C) the ARCI; or
 - (D) the horse racing commission of any state or country;which is verified in writing relating to drug or alcohol abuse, or both.
- (10) Any other physical conduct at the track which can be documented which would indicate reasonable grounds to believe the existence of, dependence on, possession of, or usage of:
 - (A) a controlled substance; or
 - (B) an alcohol violation.
- (11) Refusal to provide a urine **or saliva** sample when requested to do so within this section.
- (12) Recent arrest or pending criminal charges regarding the sale, possession, manufacture, cultivation, or use of illegal drugs.

(Indiana Horse Racing Commission; [71 IAC 8-10-3](#); emergency rule filed Feb 10, 1994, 9:20 a.m.: 17 IR 1176; emergency rule filed Mar 25, 1996, 10:15 a.m.: 19 IR 2081; emergency rule filed Feb 13, 1998, 10:00 a.m.: 21 IR 2414; readopted filed Oct 30, 2001, 11:50 a.m.: 25 IR 899; readopted filed Mar 23, 2007, 11:31 a.m.: [20070404-IR-071070030RFA](#); readopted filed Nov 26, 2013, 11:25 a.m.: [20131225-IR-071130345RFA](#); emergency rule filed Apr 17, 2015, 3:15 p.m.: [20150422-IR-071150105ERA](#))

SECTION 4. [71 IAC 8-10-4](#) IS AMENDED TO READ AS FOLLOWS:

[71 IAC 8-10-4](#) Taking of samples

Authority: [IC 4-31-3-9](#)

Affected: [IC 4-31](#)

Sec. 4. Any applicant or licensee selected by direction of the judges, commission personnel, or their designee, who is requested to submit to a urine **or saliva** test shall, without undue delay, at a location and in the manner prescribed by the commission provide the urine **or saliva** sample, **or both**.

(Indiana Horse Racing Commission; [71 IAC 8-10-4](#); emergency rule filed Feb 10, 1994, 9:20 a.m.: 17 IR 1176; readopted filed Oct 30, 2001, 11:50 a.m.: 25 IR 899; readopted filed Mar 23, 2007, 11:31 a.m.: [20070404-IR-071070030RFA](#); readopted filed Nov 26, 2013, 11:25 a.m.: [20131225-IR-071130345RFA](#); emergency rule filed Apr 17, 2015, 3:15 p.m.: [20150422-IR-071150105ERA](#))

SECTION 5. [71 IAC 8-10-5](#) IS AMENDED TO READ AS FOLLOWS:

[71 IAC 8-10-5](#) Positive sample results

Authority: [IC 4-31-3-9](#)

Affected: [IC 4-31](#)

Sec. 5. (a) A positive test result attained shall be reported in writing to the commission director of security or his or her designee from the laboratory performing the test analysis. A positive test result confirming the presence of any controlled substance or prescription drugs shall be prima facie evidence that there has been a violation of section 1 of this rule. In the event of such a positive test, it is presumed that:

- (1) the sample of urine **or saliva** tested by the laboratory to which it is sent is taken from the person and its integrity has been preserved;
- (2) all accompanying procedures of collection, preservation, transfer to the laboratory, and analysis of the sample are correct and accurate; and

- (3) the report received from the laboratory pertains to the sample taken from the person in question and correctly reflects the condition of the person at the time that the sample was given.

With respect to the presumptions set forth in this subsection, the burden is on the person against whom the test is offered to prove otherwise at any hearing in regard to the matter which is conducted by the judges or by the commission.

(b) Upon receipt of written notice from the testing laboratory that a specimen has been found positive for a controlled substance or a prescription drug, the commission director of security or his or her designee shall, as quickly as possible, notify the licensed person by:

- (1) public service;
 - (2) in person; or
 - (3) by certified mail, return receipt requested;
- of the positive test.

(c) An association that has obtained a positive test result confirming the presence of any controlled substance in an association employee, who is a licensee or an applicant for a license, shall notify the commission director of security or his or her designee and the affected employee as quickly as possible.

(Indiana Horse Racing Commission; [71 IAC 8-10-5](#); emergency rule filed Feb 10, 1994, 9:20 a.m.: 17 IR 1176; emergency rule filed Feb 24, 2000, 2:32 p.m.: 23 IR 1670, eff Feb 24, 2000; errata filed Mar 13, 2000, 7:36 a.m.: 23 IR 1656; emergency rule filed Feb 20, 2001, 10:08 a.m.: 24 IR 2109; errata filed Jun 21, 2001, 3:21 p.m.: 24 IR 3652; readopted filed Oct 30, 2001, 11:50 a.m.: 25 IR 899; readopted filed Mar 23, 2007, 11:31 a.m.: [20070404-IR-071070030RFA](#); readopted filed Nov 26, 2013, 11:25 a.m.: [20131225-IR-071130345RFA](#); emergency rule filed Apr 17, 2015, 3:15 p.m.: [20150422-IR-071150105ERA](#))

SECTION 6. [71 IAC 8-10-6](#) IS AMENDED TO READ AS FOLLOWS:

[71 IAC 8-10-6](#) Penalties

Authority: [IC 4-31-3-9](#)

Affected: [IC 4-31](#)

Sec. 6. (a) Upon a finding of a positive test, the judges or commission shall, to the extent of its regulatory authority, impose the following sanctions:

- (1) For a licensee's first violation, he or she shall be suspended for thirty (30) days and shall be subject to a mandatory drug retest after thirty (30) days from the first violation of this article. Such additional drug test shall be done by the commission testing laboratory at the licensee's expense. Until such retest achieves negative results, the licensee shall remain suspended.
- (2) For a second violation, the licensee shall be suspended for a minimum of sixty (60) days and shall be required to enroll in a substance abuse treatment program approved by the commission. It shall be the licensee's responsibility to provide the commission with written notice of his or her enrollment, weekly status reports, and written notice that he or she has successfully completed the program and has been discharged. The licensee shall remain suspended until the requirements have been fulfilled. The requirements shall include an additional drug test with negative results. Such test shall be under the supervision or approval of the commission.
- (3) For a third violation, the licensee will receive a mandatory suspension of his or her license for a period of one (1) year and shall not be eligible to reapply for his or her license until the applicant pays for and submits to two (2) urine **or saliva** samples, **or both**, thirty (30) days apart with both samples failing to show any trace of a controlled substance or prescription drug. All such samples shall be obtained and tested by the commission or approved by the commission at a location and in a manner prescribed by the commission and at the expense of the licensee. After the licensee has received two (2) negative tests, he or she may reapply for a license unless his or her continuing participation at a race meeting shall be deemed by the commission director of security or his or her designee to be detrimental to the best interest of horse racing.

(b) Prior human controlled substance or prescription drug violations reflected on a person's racing record from any jurisdiction recognized by the commission, including Indiana, shall be counted as violations when determining appropriate penalties as set forth in subsection (a).

(c) In determining the penalty to impose for an offense covered by this rule, the judges or the commission may

consider any mitigating and/or exacerbating circumstances and make an appropriate adjustment to the penalties which are set forth in subsection (a).

(Indiana Horse Racing Commission; [71 IAC 8-10-6](#); emergency rule filed Feb 10, 1994, 9:20 a.m.: 17 IR 1177; emergency rule filed Mar 25, 1997, 10:00 a.m.: 20 IR 2163; emergency rule filed Feb 24, 2000, 2:32 p.m.: 23 IR 1670, eff Feb 24, 2000; errata filed Mar 13, 2000, 7:36 a.m.: 23 IR 1656; readopted filed Oct 30, 2001, 11:50 a.m.: 25 IR 899; readopted filed Mar 23, 2007, 11:31 a.m.: [20070404-IR-071070030RFA](#); emergency rule filed Oct 3, 2013, 2:08 p.m.: [20131009-IR-071130452ERA](#); emergency rule filed Apr 17, 2015, 3:15 p.m.: [20150422-IR-071150105ERA](#))

SECTION 7. [71 IAC 8.5-3-3](#) IS AMENDED TO READ AS FOLLOWS:

[71 IAC 8.5-3-3](#) Administrative procedures prior to split sample testing

Authority: [IC 4-31-3-9](#)

Affected: [IC 4-31-12](#)

Sec. 3. (a) The results of all tests performed by the primary laboratory or laboratories are confidential **until such time a ruling is issued in that matter** and shall only be communicated to the commission, commission staff, stewards, owner, and trainer. Notice of a positive test result may be communicated verbally to the trainer. The trainer shall be responsible for promptly notifying the owner of a horse of a positive test as reported by the primary laboratory.

(b) The trainer or owner of a horse for which a positive result on a drug test is returned may request that the stewards submit the retained part of the specimen for testing in accordance with this section. The specimen must be tested by a laboratory that is identified on the list of approved laboratories maintained by the commission and acceptable to the following:

- (1) The commission.
- (2) The primary laboratory.

Laboratories providing split sample testing shall be ISO 17025 accredited unless otherwise approved by the commission. The request must be in writing, include the laboratory selection, and must be delivered to the stewards not later than ninety-six (96) hours after the trainer has received notice of a positive test result. Failure to request testing of a split sample and provide all necessary information within ninety-six (96) hours shall constitute a waiver of the right. The split sample laboratory shall be contacted by a representative of the commission to request acceptance of a split sample. The trainer or owner may choose any laboratory on the commission maintained applicable list to test the sample. However, the commission or executive director may limit the choice of laboratory for the detection of specific drugs.

(c) The trainer or owner may elect to waive his or her right to testing of a split sample.

(d) The owner or trainer of a horse who submits a specimen for drug testing is entitled to be present or have a representative present at any time that the retained part of the specimen is prepared for storage or is tested.

(e) The split sample laboratory may require the owner or trainer of a horse who submits a specimen for testing to execute a hold harmless agreement for the split sample laboratory and an agreement that the results of the split sample laboratory can be introduced as evidence in any hearing. The agreements shall remain in the hands of the stewards of the state in which the positive was reported.

(f) The trainer or owner may request that negative control samples be tested with the split sample. The identities of the negative control samples and the split sample shall be known only to the commission.

(g) The presence of a drug or drug metabolite in any quantity, excluding phenylbutazone, flunixin, ketoprofen, furosemide, or as permitted in [71 IAC 8.5-1-4.2](#) and [71 IAC 8.5-1-9](#), is sufficient for a finding of a positive test.

(Indiana Horse Racing Commission; [71 IAC 8.5-3-3](#); emergency rule filed Jun 15, 1995, 5:00 p.m.: 18 IR 2883, eff Jul 1, 1995; emergency rule filed Mar 25, 1997, 10:00 a.m.: 20 IR 2157; emergency rule filed Jun 22, 1998, 5:08 p.m.: 21 IR 4232; readopted filed Oct 30, 2001, 11:50 a.m.: 25 IR 899; emergency rule filed Jul 28, 2006, 11:17 a.m.: [20060809-IR-071060278ERA](#), eff Aug 1, 2006; readopted filed Mar 23, 2007, 11:31 a.m.:

[20070404-IR-071070030RFA](#); emergency rule filed Jul 23, 2007, 9:16 a.m.: [20070808-IR-071070461ERA](#), eff Jul 18, 2007 [[IC 4-22-2-37.1](#) establishes the effectiveness of an emergency rule upon filing with the Publisher. LSA Document #07-461(E) was filed with the Publisher July 23, 2007.]; errata filed Aug 14, 2007, 1:28 p.m.: [20070829-IR-071070461ACA](#); emergency rule filed Mar 23, 2010, 1:27 p.m.: [20100331-IR-071100170ERA](#); emergency rule filed Jan 25, 2012, 12:20 p.m.: [20120201-IR-071120056ERA](#); emergency rule filed Apr 5, 2013, 3:50 p.m.: [20130410-IR-071130135ERA](#); emergency rule filed Apr 17, 2015, 3:15 p.m.: [20150422-IR-071150105ERA](#))

SECTION 8. [71 IAC 8.5-10-2](#) IS AMENDED TO READ AS FOLLOWS:

[71 IAC 8.5-10-2](#) Applicant and licensee subject to testing

Authority: [IC 4-31-3-9](#)

Affected: [IC 4-31](#)

Sec. 2. Each licensee at a race track or other facility under the control of the commission or applicant for a license may be subject to a urine **or saliva** test, **or both**, at any time while within the enclosure of any race track or other facility under the control of the commission at the direction of the executive director, the stewards, or commission security if there is reasonable suspicion to believe that such licensee is possessing or using any controlled substance or any drug in violation of any federal or state law. This provision notwithstanding, licensees are subject to random urine **or saliva** testing pursuant to policies approved by the commission. Failure to submit to or complete a urine **or saliva** test, at the time, location, and manner directed by commission personnel shall constitute a refusal to be tested. Any licensee who fails to submit to or complete such a test shall be immediately suspended for sixty (60) days and shall not be allowed to participate at any race track under the control of the commission until a negative test result is achieved. Any applicant who fails to submit to such a test when requested to do so shall be refused or denied a license.

(Indiana Horse Racing Commission; [71 IAC 8.5-10-2](#); emergency rule filed Jun 15, 1995, 5:00 p.m.: 18 IR 2887, eff Jul 1, 1995; emergency rule filed Feb 13, 1998 10:00 a.m.: 21 IR 2422; emergency rule filed Jun 22, 2000, 3:05 p.m.: 23 IR 2783; readopted filed Oct 30, 2001, 11:50 a.m.: 25 IR 899; emergency rule filed Mar 10, 2006, 11:00 a.m.: 29 IR 2227; readopted filed Mar 23, 2007, 11:31 a.m.: [20070404-IR-071070030RFA](#); readopted filed Nov 26, 2013, 11:25 a.m.: [20131225-IR-071130345RFA](#); emergency rule filed Apr 17, 2015, 3:15 p.m.: [20150422-IR-071150105ERA](#))

SECTION 9. [71 IAC 8.5-10-3](#) IS AMENDED TO READ AS FOLLOWS:

[71 IAC 8.5-10-3](#) Reasonable suspicion selection

Authority: [IC 4-31-3-9](#)

Affected: [IC 4-31](#)

Sec. 3. (a) Applicants for a license or a licensee may be selected at any time while within the enclosure for testing on a reasonable suspicion basis.

(b) Reasonable suspicion. When determining whether there is reasonable suspicion to require testing, the stewards may consider, but are not limited to, any of the following factors:

- (1) Unexplained or continued rule violations which have a detrimental effect on racing.
- (2) Involvement in any accident which causes injury to person or animal at the track as well as any near accident which created a clear danger of accident or injury to person or animal at the track.
- (3) Willful conduct detrimental to horse racing as evidenced by continued rule violations, other disciplinary problems, behavioral problems, disturbances, or other similar conduct at the track.
- (4) Observable physical or emotional impairment at the track.
- (5) Involvement in a race of questionable outcome or circumstance as determined by the stewards in the exercise of their expertise.
- (6) Willful abuse of animal or person who is engaged in a race, work, or exercise at the track.
- (7) Prior positive test or tests in this or other jurisdictions, excluding those where a valid legal prescription has been revealed.
- (8) Performance of prescribed duties in a manner which indicates a best effort to win is not present at the track.
- (9) Information supplied by:

- (A) a law enforcement agency;
 - (B) the ARCI; or
 - (C) the horse racing commission of any state or country;
- which is verified in writing relating to drug or alcohol abuse, or both.
- (10) Any other physical conduct at the track which can be documented which would indicate reasonable grounds to believe the existence of, dependence on, possession of, or usage of:
- (A) a controlled substance; or
 - (B) an alcohol violation.
- (11) Refusal to provide a urine **or saliva** sample when requested to do so within this section.
- (12) Recent arrest or pending criminal charges regarding the sale, possession, manufacture, cultivation, or use of illegal drugs.

(Indiana Horse Racing Commission; [71 IAC 8.5-10-3](#); emergency rule filed Jun 15, 1995, 5:00 p.m.: 18 IR 2887, eff Jul 1, 1995; emergency rule filed May 20, 1996, 10:00 a.m.: 19 IR 2894; emergency rule filed Feb 13, 1998 10:00 a.m.: 21 IR 2422; readopted filed Oct 30, 2001, 11:50 a.m.: 25 IR 899; readopted filed Mar 23, 2007, 11:31 a.m.: [20070404-IR-071070030RFA](#); readopted filed Nov 26, 2013, 11:25 a.m.: [20131225-IR-071130345RFA](#); emergency rule filed Apr 17, 2015, 3:15 p.m.: [20150422-IR-071150105ERA](#))

SECTION 10. [71 IAC 8.5-10-4](#) IS AMENDED TO READ AS FOLLOWS:

[71 IAC 8.5-10-4](#) Taking of samples

Authority: [IC 4-31-3-9](#)

Affected: [IC 4-31](#)

Sec. 4. Any applicant or licensee selected by direction of the stewards, commission personnel, or their designee, who is requested to submit to a urine **or saliva** test shall, without undue delay, at a location and in the manner prescribed by the commission provide the urine **or saliva** sample, **or both**.

(Indiana Horse Racing Commission; [71 IAC 8.5-10-4](#); emergency rule filed Jun 15, 1995, 5:00 p.m.: 18 IR 2887, eff Jul 1, 1995; readopted filed Oct 30, 2001, 11:50 a.m.: 25 IR 899; readopted filed Mar 23, 2007, 11:31 a.m.: [20070404-IR-071070030RFA](#); emergency rule filed Oct 3, 2013, 2:08 p.m.: [20131009-IR-071130452ERA](#); emergency rule filed Apr 17, 2015, 3:15 p.m.: [20150422-IR-071150105ERA](#))

SECTION 11. [71 IAC 8.5-10-5](#) IS AMENDED TO READ AS FOLLOWS:

[71 IAC 8.5-10-5](#) Positive sample results

Authority: [IC 4-31-3-9](#)

Affected: [IC 4-31](#)

Sec. 5. (a) A positive test result attained shall be reported in writing to the commission director of security or his or her designee from the laboratory performing the test analysis. A positive test result confirming the presence of any controlled substance or prescription drugs shall be prima facie evidence that there has been a violation of section 1 of this rule. In the event of such a positive test, it is presumed that:

- (1) the sample of urine **or saliva** tested by the laboratory to which it is sent is taken from the person and its integrity has been preserved;
- (2) all accompanying procedures of collection, preservation, transfer to the laboratory, and analysis of the sample are correct and accurate; and
- (3) the report received from the laboratory pertains to the sample taken from the person in question and correctly reflects the condition of the person at the time that the sample was given.

With respect to the presumptions set forth in this subsection, the burden is on the person against whom the test is offered to prove otherwise at any hearing in regard to the matter which is conducted by the stewards or by the commission.

(b) Upon receipt of written notice from the testing laboratory that a specimen has been found positive for a controlled substance or a prescription drug, the commission director of security or his or her designee shall, as quickly as possible, notify the licensed person by:

- (1) public service;
- (2) in person; or

(3) by certified mail, return receipt requested;
of the positive test.

(c) An association that has obtained a positive test result confirming the presence of any controlled substance in an association employee, who is a licensee or an applicant for a license, shall notify the commission director of security or his or her designee and the affected employee as quickly as possible.

(Indiana Horse Racing Commission; [71 IAC 8.5-10-5](#); emergency rule filed Jun 15, 1995, 5:00 p.m.: 18 IR 2888, eff Jul 1, 1995; emergency rule filed Jun 22, 2000, 3:05 p.m.: 23 IR 2784; emergency rule filed Aug 23, 2001, 9:58 a.m.: 25 IR 122; readopted filed Oct 30, 2001, 11:50 a.m.: 25 IR 899; readopted filed Mar 23, 2007, 11:31 a.m.: [20070404-IR-071070030RFA](#); readopted filed Nov 26, 2013, 11:25 a.m.: [20131225-IR-071130345RFA](#); emergency rule filed Apr 17, 2015, 3:15 p.m.: [20150422-IR-071150105ERA](#))

SECTION 12. [71 IAC 8.5-10-6](#) IS AMENDED TO READ AS FOLLOWS:

[71 IAC 8.5-10-6](#) Penalties

Authority: [IC 4-31-3-9](#)

Affected: [IC 4-31](#)

Sec. 6. (a) Upon a finding of a positive test, the stewards or commission shall, to the extent of its regulatory authority, impose the following sanctions:

(1) For a licensee's first violation, he or she shall be suspended for thirty (30) days and shall be subject to a mandatory drug retest after thirty (30) days from the first violation of this article. Such additional drug test shall be done by the commission testing laboratory at the licensee's expense. Until such retest achieves negative results, the licensee shall remain suspended.

(2) For a second violation, the licensee shall be suspended for a minimum of sixty (60) days and shall be required to enroll in a substance abuse treatment program approved by the commission. It shall be the licensee's responsibility to provide the commission with written notice of his or her enrollment, weekly status reports, and written notice that he or she has successfully completed the program and has been discharged. The licensee shall remain suspended until the requirements have been fulfilled. The requirements shall include an additional drug test with negative results. Such test shall be under the supervision or approval of the commission.

(3) For a third violation, the licensee shall be suspended for a minimum of sixty (60) days and shall be required to enroll in a substance abuse treatment program approved by the commission. It shall be the licensee's responsibility to provide the commission with written notice of his or her enrollment, weekly status reports, and written notice that he or she has successfully completed the program and has been discharged. The licensee shall remain suspended until the requirements have been fulfilled. The person shall not be eligible to reapply for his or her license until the applicant pays for and submits to two (2) urine **or saliva** samples, **or both**, thirty (30) days apart with both samples failing to show any trace of a controlled substance or prescription drug. All such samples shall be obtained and tested by the commission or approved by the commission at a location and in a manner prescribed by the commission and at the expense of the licensee. After the licensee has received two (2) negative tests, he or she may reapply for a license unless his or her continuing participation at a race meeting shall be deemed by the commission director of security or his or her designee to be detrimental to the best interest of horse racing.

(b) Prior human controlled substance or prescription drug violations reflected on a person's racing record from any jurisdiction recognized by the commission, including Indiana, shall be counted as violations when determining appropriate penalties as set forth in subsections (a) [subsection (a)].

(c) In determining the penalty to impose for an offense covered by this rule, the stewards or the commission may consider any mitigating or exacerbating circumstances and make an appropriate adjustment to the penalties which are set forth in subsection (a).

(Indiana Horse Racing Commission; [71 IAC 8.5-10-6](#); emergency rule filed Jun 15, 1995, 5:00 p.m.: 18 IR 2888, eff Jul 1, 1995; emergency rule filed Mar 25, 1997, 10:00 a.m.: 20 IR 2158; emergency rule filed Jun 22, 2000, 3:05 p.m.: 23 IR 2784; readopted filed Oct 30, 2001, 11:50 a.m.: 25 IR 899; emergency rule filed Aug 20, 2002, 3:00 p.m.: 26 IR 58; readopted filed Mar 23, 2007, 11:31 a.m.: [20070404-IR-071070030RFA](#); emergency rule filed Oct 3, 2013, 2:08 p.m.: [20131009-IR-071130452ERA](#); emergency rule filed Apr 17, 2015, 3:15 p.m.: [20150422-IR-071150105ERA](#))

SECTION 13. [71 IAC 11-1-12](#) IS AMENDED TO READ AS FOLLOWS:

[71 IAC 11-1-12](#) Contracts with a permit holder; approval by commission or executive director

Authority: [IC 4-31-3-9](#)

Affected: [IC 4-31-5](#); [IC 4-31-6-1](#); [IC 4-35](#)

Sec. 12. (a) ~~Except as provided in [71 IAC 12-1-10](#), a permit holder may not execute any of the following contracts regarding the operation of the race track for which the permit holder is licensed without the prior approval of the commission:~~

- ~~(1) A contract, other than an employment contract, for which the amount of consideration is fifty thousand dollars (\$50,000) or more.~~
- ~~(2) A series of contracts effective during the same fiscal year of the permit holder, other than employment contracts, between the permit holder and the same contractor for which the total amount of consideration of the contracts is fifty thousand dollars (\$50,000) or more.~~
- ~~(3) A contract for management, concession, or totalizator services or a contract with a horsemen's association.~~

~~(b) A contract that requires approval under this section must be in writing.~~

~~(c) To receive the approval of the commission for a proposed contract subject to this section, the permit holder shall submit to the commission a copy of the proposed contract and background information on the contractor on a form provided by the commission.~~

~~(d) (a) The commission may delegate to the executive director of the commission the authority to approve following contracts other than~~ **must be approved by the commission or the executive director:**

- ~~(1) contracts for management; concession, or~~
- ~~(2) contracts for totalizator services; or~~
- ~~(3) contracts with horsemen's associations; and~~
- (4) a contract or a series of contracts between a permit holder and a related party that exceeds fifty thousand dollars (\$50,000), other than a contract for employment.**

(b) "Related party" means:

- (1) An individual or business entity having a pecuniary interest in a permit holder, or an affiliate thereof if the permit holder or affiliate is not a publicly held company.**
- (2) A holder of more than five percent (5%) of the outstanding shares of a permit holder or an affiliate thereof if the permit holder or affiliate is a publicly held company.**
- (3) A key person of a permit holder or an affiliate thereof.**
- (4) An affiliate of a permit holder.**
- (5) A relative of a holder of more than five percent (5%) of the outstanding shares of a permit holder or an affiliate thereof if the permit holder or affiliate is a publicly held company.**
- (6) A relative of a key person of a permit holder or an affiliate thereof.**
- (7) A relative of an affiliate of a permit holder.**
- (8) A trust for the benefit of or managed by a permit holder or an affiliate or a key person thereof.**
- (9) Another person who is able to control or significantly influence the management or operating policies of a permit holder or an affiliate thereof.**

(c) Any contract required to be approved by the commission or the executive director shall be submitted to for approval within seven (7) days of the execution of the contract. The commission or the executive director may refuse to approve a contract in (a) [subsection (a)] if it is determined that the contract is not in the best interest of horse racing and pari-mutuel wagering.

(d) A contract or transaction entered into by a permit holder that exceeds the total dollar amount of fifty thousand dollars (\$50,000) shall be a written contract.

~~(e) The commission or, upon delegation of the commission, the executive director of the commission, shall determine whether the contract may affect the integrity of pari-mutuel racing. In making a determination that a reserves the right to terminate any contract may affect the integrity of racing, the commission or, upon~~

delegation of the commission, the executive director of the commission may consider such factors as it considers relevant, including, without limitation, the following: **executed by a permit holder that is not in compliance with [IC 4-31](#), [IC 4-35](#), or this title.**

- (1) The value and duration of the contract.
- (2) The extent to which the contractor will be on the premises of the permit holder.
- (3) The relationship of the contract to the general security of a facility, including opportunity for contact between the contractor and race animals, occupational licensees, or patrons.
- (4) The opportunity for the contractor to influence the management and conduct of pari-mutuel racing.
- (5) The contact with admission, pari-mutuel, or concession money.
- (6) Whether the commission has reason to believe that the contractor is incompetent, financially irresponsible, or not of good character.

(f) ~~Until approved by the commission, any contract regarding the operation of a race track described in subsection (a) shall not be valid or binding on any permit holder. The commission or, upon delegation by the commission, the executive director of the commission shall, within forty five (45) days after submission of a contract to the commission, approve or disapprove the contract, and if not acted upon by the commission within forty five (45) days after submission, the contract shall be considered approved by the commission. Provided, however, that the commission or, upon delegation by the commission, the executive director of the commission may request additional information regarding the contract during the forty five (45) day period and shall thereafter have thirty (30) days to act with respect to the contract after receipt of such additional information. Provided, further, that the permit holder may request that the commission take action on the contract within a shorter period of time, which may be accepted by the commission or, upon delegation by the commission, the executive director of the commission in their sole discretion upon a showing of good cause by the permit holder.~~

(g) ~~Except as provided in [71 IAC 12-1-10](#), any contract regarding the operation of the race track for less than fifty thousand dollars (\$50,000) entered into by any permit holder shall be filed with the commission within seven (7) days of execution.~~

(h) ~~A permit holder for a particular location may not receive services from another person or entity at such location if the performance of the services by that person or entity requires a license under [IC 4-31-6-1](#), unless that person or entity is licensed to provide those services at that particular location.~~

(i) ~~In the event any permit holder takes actions pursuant to any contract which has not been approved or filed as provided herein or which is not permitted as provided in subsection (h), the commission may suspend or revoke the permit held by the permit holder or assess such fines or penalties which the commission shall in its discretion deem appropriate.~~

(Indiana Horse Racing Commission; [71 IAC 11-1-12](#); emergency rule filed Feb 10, 1994, 9:20 a.m.: 17 IR 1212; errata filed Mar 9, 1994, 2:50 p.m.: 17 IR 1622; emergency rule filed Mar 25, 1996, 10:15 a.m.: 19 IR 2086; readopted filed Oct 30, 2001, 11:50 a.m.: 25 IR 899; readopted filed Mar 23, 2007, 11:31 a.m.: [20070404-IR-071070030RFA](#); readopted filed Nov 26, 2013, 11:25 a.m.: [20131225-IR-071130345RFA](#); emergency rule filed Apr 17, 2015, 3:15 p.m.: [20150422-IR-071150105ERA](#))

SECTION 14. [71 IAC 11-1-16](#) IS AMENDED TO READ AS FOLLOWS:

[71 IAC 11-1-16](#) Material modification; expansion or reduction of proposed or existing facility

Authority: [IC 4-31-3-9](#)

Affected: [IC 4-31](#)

Sec. 16. No permit holder may materially alter an existing or proposed race track facility after a permit has been issued for that facility without prior approval of the commission or, upon delegation by the commission, the secretary of the commission. No permit holder may expand or reduce an existing or proposed race track facility after a permit has been issued for that facility, which expansion or reduction would result in an increase or decrease in the actual cost of the facility of ~~twenty-five~~ **five hundred** thousand dollars (~~\$25,000~~) (**\$500,000**) or more as compared to the estimated or projected development costs of the facility as proposed at the time the permit was granted or which would cost in excess of ~~fifty~~ **five hundred** thousand dollars (~~\$50,000~~) (**\$500,000**) at an existing facility, without the prior approval of the commission or, upon delegation by the commission, the secretary of the commission. In the event a permit holder shall fail to obtain required approval, the commission

may revoke or suspend the permit holder's permit or assess such fines or penalties which the commission shall in its discretion deem appropriate.

(Indiana Horse Racing Commission; [71 IAC 11-1-16](#); emergency rule filed Feb 10, 1994, 9:20 a.m.: 17 IR 1213; emergency rule filed Mar 25, 1996, 10:15 a.m.: 19 IR 2087; readopted filed Oct 30, 2001, 11:50 a.m.: 25 IR 899; readopted filed Mar 23, 2007, 11:31 a.m.: [20070404-IR-071070030RFA](#); readopted filed Nov 26, 2013, 11:25 a.m.: [20131225-IR-071130345RFA](#); emergency rule filed Apr 17, 2015, 3:15 p.m.: [20150422-IR-071150105ERA](#))

SECTION 15. [71 IAC 12-1-15](#) IS AMENDED TO READ AS FOLLOWS:

[71 IAC 12-1-15](#) Contracts with a license holder; approval by commission or executive director

Authority: [IC 4-31-3-9](#)

Affected: [IC 4-31-5.5](#); [IC 4-31-6-1](#); [IC 4-35](#)

Sec. 15. (a) ~~A license holder may not execute any of~~ The following contracts regarding the operation of the ~~satellite facility for which the license holder is licensed without the prior approval of~~ **must be approved by** the commission **or the executive director:**

~~(1) A contract, other than an employment contract, for which the amount of consideration is fifty thousand dollars (\$50,000) or more.~~

~~(2) A series of contracts effective during the same fiscal year of the license holder, other than employment contracts, between the license holder and the same contractor for which the total amount of consideration of the contracts is fifty thousand dollars (\$50,000) or more.~~

~~(3) A contract~~ **(1) contracts** for management; concession, or totalizer

(2) contracts for totalizer services;

(3) a contract or a series of contracts between a license holder and a related party that exceeds fifty thousand dollars (\$50,000), other than a contract for employment.

~~(b) A contract that requires approval under this section must be in writing. "Related party" means:~~

(1) An individual or business entity having a pecuniary interest in a license holder, or an affiliate thereof if the license holder or affiliate is not a publicly held company.

(2) A holder of more than five percent (5%) of the outstanding shares of a license holder or an affiliate thereof if the permit holder or affiliate is a publicly held company.

(3) A key person of a license holder or an affiliate thereof.

(4) An affiliate of a license holder.

(5) A relative of a holder of more than five percent (5%) of the outstanding shares of a license holder or an affiliate thereof if the license holder or affiliate is a publicly held company.

(6) A relative of a key person of a license holder or an affiliate thereof.

(7) A relative of an affiliate of a license holder.

(8) A trust for the benefit of or managed by a license holder or an affiliate or a key person thereof.

(9) Another person who is able to control or significantly influence the management or operating policies of a license holder or an affiliate thereof.

~~(c) To receive the approval of the commission for a proposed contract subject to this section, the license holder shall submit to the commission a copy of the proposed contract and background information on the contractor on a form provided by the commission. Any contract required to be approved by the commission or the executive director shall be submitted for approval within seven (7) days of execution of the contract. The commission or the executive director may refuse to approve a contract in (a) [subsection (a)] if it is determined that the contract is not in the best interest of horse racing or pari-mutuel wagering.~~

~~(d) The commission may delegate to the secretary of the commission the authority to approve contracts other than contracts for management, concession, or totalizer services. A contract or transaction entered into by a license holder that exceeds the total dollar amount of fifty thousand dollars (\$50,000) shall be a written contract.~~

~~(e) The commission or, upon delegation of the commission, the secretary of the commission, shall determine whether the contract may affect the integrity of pari-mutuel racing. In making a determination that a reserves the right to terminate any contract may affect the integrity of racing, the commission or, upon delegation by the commission, the secretary of the commission, may consider such factors as it considers relevant, including;~~

without limitation, the following: **executed by a license holder that is not in compliance with [IC 4-31](#), [IC 4-35](#), or this title.**

- (1) The value and duration of the contract.
- (2) The extent to which the contractor will be on the premises of the license holder.
- (3) The relationship of the contract to the general security of a facility, including opportunity for contact between the contractor, occupational licensees, or patrons.
- (4) The opportunity for the contractor to influence the management and conduct of pari-mutuel racing.
- (5) The contact with admission, pari-mutuel, or concession money.
- (6) Whether the commission has reason to believe that the contractor is incompetent, financially irresponsible, or not of good character.

(f) Until approved by the commission, any contract regarding the operation of a satellite facility described in subsection (a) shall not be valid or binding on any licensee. The commission or, upon delegation by the commission, the secretary of the commission, shall, within forty-five (45) days after submission of a contract to the commission, approve or disapprove the contract, and, if not acted upon by the commission within forty-five (45) days of the submission, the contract will be considered approved by the commission. Provided, however, that the commission or, upon delegation by the commission, the secretary of the commission, may request additional information regarding the contract during the forty-five (45) day period and shall thereafter have thirty (30) days to act with respect to the contract after receipt of such additional information. Provided, further, that the license holder may request that the commission take action on the contract within a shorter period of time, which period may be accepted by the commission or, upon delegation by the commission, the secretary of the commission, in their sole discretion upon a showing of good cause by the license holder.

(g) Any contract regarding the operation of the satellite facility for less than fifty thousand dollars (\$50,000) entered into by any licensee shall be filed with the commission within seven (7) days of execution.

(h) A satellite license holder for a particular location may not receive services from another person or entity at such location if the performance of the services by that person or entity requires a license under [IC 4-31-6-1](#), unless that person or entity is licensed under [IC 4-31-6-1](#) to provide those services at that particular location.

(i) In the event any licensee takes actions pursuant to any contract which has not been approved or filed as provided herein, or which is not permitted as provided in subsection (h), the commission may suspend or revoke the license held by the licensee or assess such fines or penalties which the commission shall in its discretion determine appropriate.

(Indiana Horse Racing Commission; [71 IAC 12-1-15](#); emergency rule filed Feb 10, 1994, 9:20 a.m.: 17 IR 1218; errata filed Mar 9, 1994, 2:50 p.m.: 17 IR 1622; readopted filed Oct 30, 2001, 11:50 a.m.: 25 IR 899; readopted filed Mar 23, 2007, 11:31 a.m.: [20070404-IR-071070030RFA](#); readopted filed Nov 26, 2013, 11:25 a.m.: [20131225-IR-071130345RFA](#); emergency rule filed Apr 17, 2015, 3:15 p.m.: [20150422-IR-071150105ERA](#))

SECTION 16. [71 IAC 12-1-19](#) IS AMENDED TO READ AS FOLLOWS:

[71 IAC 12-1-19](#) Material modification, expansion, or reduction of proposed or existing satellite facility

Authority: [IC 4-31-3-9](#)

Affected: [IC 4-31](#)

Sec. 19. No license holder may materially alter an existing or proposed satellite facility after a license has been issued for that facility without prior approval of the commission or, upon delegation by the commission, the secretary of the commission. No license holder may expand or reduce an existing or proposed satellite facility after a license has been issued for that facility, which expansion or reduction would result in an increase or decrease in the actual cost of the facility of ~~twenty-five thousand dollars (\$25,000)~~ **five hundred thousand dollars (\$500,000)** or more in as compared to the estimated or projected development costs of the facility as proposed at the time the license was granted or which would cost in excess of ~~fifty thousand dollars (\$50,000)~~ **five hundred thousand dollars (\$500,000)** at an existing facility, without prior approval of the commission or, upon delegation by the commission, the secretary of the commission. In the event a license holder shall fail to obtain required approval, the commission may revoke or suspend the license holder's license or assess such fines or penalties which the commission shall in its discretion determine appropriate.

(Indiana Horse Racing Commission; [71 IAC 12-1-19](#); emergency rule filed Feb 10, 1994, 9:20 a.m.: 17 IR 1219;

emergency rule filed Mar 25, 1996, 10:15 a.m.: 19 IR 2089; readopted filed Oct 30, 2001, 11:50 a.m.: 25 IR 899; readopted filed Mar 23, 2007, 11:31 a.m.: [20070404-IR-071070030RFA](#); readopted filed Nov 26, 2013, 11:25 a.m.: [20131225-IR-071130345RFA](#); emergency rule filed Apr 17, 2015, 3:15 p.m.: [20150422-IR-071150105ERA](#))

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